

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WESLEY A. MASSEY,
Plaintiff,

v.

JOHN WETZEL, et al.,
Defendants.

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C.A. No. 20-722 Pittsburgh

District Judge Susan Paradise Baxter
Magistrate Judge Lisa Pupo Lenihan

MEMORANDUM ORDER

Plaintiff Wesley A. Massey, an inmate formerly incarcerated at the State Correctional Institution at Pine Grove in Indiana, Pennsylvania (“SCI-Pine Grove”), initiated this *pro se* civil rights action on May 19, 2020, by filing a motion to proceed *in forma pauperis* [ECF No. 1], along with a motion for preliminary injunction and supporting brief seeking temporary release from incarceration [ECF Nos. 2, 3]. The matter was assigned to the undersigned, as presiding judge, and referred to United States Magistrate Judge Lisa Pupo Lenihan for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

A telephonic hearing on Plaintiff’s injunction motion was held before the undersigned on June 30, 2020, and the motion was ultimately denied by this Court’s Memorandum Order, dated September 15, 2020. [ECF No. 16]. In the same Order, this Court granted Plaintiff’s motion to proceed *in forma pauperis* and directed the Clerk to file Plaintiff’s *pro se* complaint on the same date. Plaintiff subsequently filed two motions for reconsideration of this Court’s Order denying his motion for preliminary injunction [ECF Nos. 22, 29]. Both of these motions were ultimately

denied by this Court's Memorandum Order dated December 28, 2020 [ECF No. 36].

In the meantime, on December 15, 2020, Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a claim [ECF No. 32]. After being granted an extension of time to file a response to Defendants' motion to dismiss, Plaintiff filed a notice of appeal with the Third Circuit Court of Appeals as to this Court's Order denying his preliminary injunction motion [ECF No. 49]. As a result, this case was stayed and administratively closed pending the outcome of the appeal [ECF No. 51].

After the Third Circuit Court dismissed Plaintiff's appeal, this case was reopened on May 2, 2023 [ECF No. 54], and Judge Lenihan issued an Order requiring Plaintiff to file a response to Defendants' motion to dismiss by June 2, 2023, or suffer the possibility of having this case dismissed for failure to prosecute. [ECF No. 56]. Both the Order reopening the case and the response Order were mailed to Plaintiff's last known addresses, but were returned undeliverable.¹ Moreover, the envelope returned from SCI-Pine Grove contained a notation indicating that Plaintiff was paroled, with no forwarding address.

Because Plaintiff failed to notify the Court of a change of address and never filed a response to Defendants' motion to dismiss, Judge Lenihan issued a Report and Recommendation ("R&R") on July 6, 2023, recommending dismissal of this case for Plaintiff's failure to prosecute [ECF No. 58]. The R&R was mailed to Plaintiff's last known address of record at SCI-Pine Grove and was, again, returned as undeliverable with a handwritten notation confirming the Plaintiff was paroled on July 22, 2023. No change of address has since been filed by Plaintiff and

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The Orders were mailed to Plaintiff's address of record in this case, at SCI-Pine Grove, and also to the mailing address indicated on the docket of Plaintiff's last filed case at Civil Action No. 22-270 Erie, which was a street address in Erie, Pennsylvania.

no objections to the R&R have been received.

Thus, after *de novo* review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 31st day of July, 2023;

IT IS HEREBY ORDERED that this case is DISMISSED for Plaintiff's failure to prosecute, and Defendants' motion to dismiss [ECF No. 32] is DISMISSED as moot. The report and recommendation of Magistrate Judge Lenihan, issued July 6, 2023 [ECF No. 58], is adopted as the opinion of the court.

The Clerk is directed to mark this case CLOSED.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Lisa Pupo Lenihan
U.S. Magistrate Judge

all parties of record